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UNITED STATES DISTRICT COURT
DISTRICT OF OREGON

LEAGUE OF WILDERNESS DEFENDERS-BLUE MOUNTAINS BIODIVERSITY PROJECT; CASCADIA WILDLANDS PROJECT; SIERRA CLUB, Plaintiffs, vs. LESLIE A.C. WELDON, in her capacity as Forest Supervisor of the Deschutes National Forest; UNITED STATES FOREST SERVICE, an administrative agency of the United States Department of Agriculture, Defendants.	Civ. Case No. COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF (Violation of National Environmental Policy Act, National Forest Management Act, and Administrative Procedure Act)

INTRODUCTION

1. This is a civil action for declaratory and injunctive relief. This action arises under the Administrative Procedure Act ("APA"), 5 U.S.C. §§701 et seq., and alleges violations of the National Forest Management Act ("NFMA"), 16 U.S.C. §§1600 et seq. and the National Environmental Policy Act ("NEPA"), 42 U.S.C. §§4321 et seq..

2. Plaintiffs League of Wilderness Defenders – Blue Mountains Biodiversity Project, the Cascadia Wildlands Project, and the Sierra Club ("Plaintiffs") seek a declaration that the United States Forest Service ("Defendant" or "Forest Service") violated federal laws in planning and approving the Five Buttes Project on the Crescent Ranger District of the Deschutes National Forest. Plaintiffs also seek injunctive relief to redress the injuries caused by these violations of law.

3. This action is a challenge to the Forest Service's Record of Decision for the Five Buttes Project, signed by Leslie A.C. Weldon on June 8, 2007, which authorizes logging across a 160,000 acre project area in the Crescent Ranger District of the Deschutes National Forest. Specifically, the Five Buttes Project allows commercial thinning on 4,235 acres, and the commercial removal of an estimated 14.4 million board feet of timber. The project would also include small tree non-commercial thinning and other fuels treatments on these same 4,235 acres plus small tree thinning and other fuels treatments on an additional 3,931 acres. To facilitate logging, 5.9 miles of temporary roads would be constructed.

4. Plaintiffs' first claim is that Defendants violate the National Forest Management Act (NFMA) by authorizing commercial logging in Late-Successional

Reserves (LSRs) that is not in accordance with the Standards and Guidelines of the Northwest Forest Plan (NFP).

5. Plaintiffs' second claim is that Defendants violate NFMA by violating the Aquatic Conservation Strategy (ACS) of the NFP by increasing overall road densities in the watershed and by preventing attainment of the nine ACS objectives.

6. Plaintiffs' third claim is that Defendants violate NEPA by failing to disclose and analyze opposing scientific opinion regarding the impacts of the project on Spotted Owl habitat, the purported need to reduce canopy density and the effect of limited slash removal.

7. Plaintiffs' fourth claim is that Defendants' violate NEPA by failing to ensure the scientific integrity of their conclusory statements that the project will reduce the risk of fire.

8. Plaintiffs' fifth claim is that Defendants violate NEPA by failing to consider the cumulative impacts of past, present, and reasonably foreseeable future federal and nonfederal actions.

9. By initiating this action, Plaintiffs seek to: (1) obtain a declaration that the Five Buttes Project violates NFMA, NEPA and APA, and their implementing regulations; (2) compel the Forest Service to modify the Five Buttes Project to comply with applicable laws; and (3) enjoin the Forest Service and its contractors, assigns and other agents from proceeding with the proposed Five Buttes Project, or any portion thereof, unless and until this court determine that the violations of law set forth herein have been corrected.

10. Should Plaintiffs prevail, Plaintiffs will seek an award of costs and attorneys' fees pursuant to the Equal Access to Justice Act, 28 U.S.C. §2412.

JURISDICTION

11. Jurisdiction is proper in this Court pursuant to 28 U.S.C. §§ 1331 (federal question), 2201 (injunctive relief), 2202 (declaratory relief), and 28 U.S.C. § 1346 (United States as a defendant). This cause of action arises under the laws of the United States, including the Administrative Procedure Act (APA), 5 U.S.C. §§ 701 et seq.; the National Environmental Policy Act (NEPA), 42 U.S.C. §§ 4321 et seq.; and the National Forest Management Act ("NFMA"), 16 U.S.C. §§ 1600 et seq.. An actual, justiciable controversy exists between Plaintiffs and Defendants. The requested relief is proper under 28 U.S.C. §§ 2201 & 2202, and 5 U.S.C. §§ 705 & 706. Plaintiffs exhausted their administrative remedies by filing an administrative appeal of the June 8, 2007 Record of Decision pursuant to 36 CFR Part 215.

VENUE

12. Venue in this court is proper under 26 U.S.C § 1391 because all or a substantial part of the events or omissions giving rise to the claims herein occurred within this judicial district. The Forest Supervisor who authorized the decision is headquartered in Bend, Oregon. Plaintiff League of Wilderness Defenders-Blue Mountains Biodiversity Project, has its headquarters near Fossil, Oregon. Plaintiff Cascadia Wildlands Project has its headquarters in Eugene, Oregon. Plaintiff Sierra Club has its Oregon headquarters in Portland, Oregon.

13. This case is properly filed in Eugene Oregon, pursuant to Local Rule 3.4 because the Five Buttes Project is located predominantly in Deschutes County, Oregon.

PARTIES

14. Plaintiff LEAGUE OF WILDERNESS DEFENDERS ("LOWD"), a 501(c)(3) non-profit corporation, is a coalition of grassroots activists working to defend wilderness and biodiversity from further human degradation. Recognizing the rapid loss of biological diversity as a threat to all life, LOWD members work around Oregon to protect and restore wilderness habitat. LOWD and its members actively participate in governmental decision-making processes on public lands, including national forests, throughout Oregon.

15. BLUE MOUTAINS BIODIVERSITY PROJECT ("BMBP") is a project of LOWD with its offices located near Fossil, Oregon. BMBP was established by LOWD to further LOWD's goals throughout the Blue Mountains. The mission of BMBP is to protect and restore the biodiversity of the Blue Mountains region of Oregon and Washington and to educate the public about the threats to forest ecosystems in eastern Oregon. In order to further its mission and protect the interests of LOWD's members in preserving the biodiversity of the Pacific Northwest forests, BMBP monitors timber sales and other Forest Service activities on the Malheur, Umatilla, Deschutes, and Ochoco National Forests. BMBP's members use and enjoy the Deschutes National Forest, including the Crescent Ranger District, for hiking, fishing, hunting, camping, photographing scenery and wildlife, and engaging in other vocational, scientific, educational, and spiritual benefit from their activities with this National Forest.

16. Plaintiff CASCADIA WILDLANDS PROJECT ("CWP") is an Oregon non-profit corporation headquartered in Eugene, Oregon. CWP's goals include defending the forests, waters and wildlife of the Cascadia bioregion, including Oregon,

by monitoring environmentally destructive projects and educating, organizing and agitating for a more compassionate and responsible relationship with the ecosystems of the bioregion. CWP seeks to defend Oregon's wild places against logging, road building, mining and other unsustainable resource extraction activities. CWP and its members participate in government decision-making with regard to public lands in the Crescent Ranger District of the Deschutes National Forest and throughout Oregon. The aesthetic, recreational, scientific, and educational interests of CWP and its members have been, are being, and unless this Court grants the requested relief, will continue to be adversely and irreparably impair by the Five Buttes Project.

17. Plaintiff SIERRA CLUB is a national nonprofit charitable corporation, with chapters and groups throughout the United States, including Oregon. The Club has approximately 800,000 plus members, including approximately 23,000 plus members of its Oregon Chapter, dedicated to exploring, enjoying, and protecting the wild places of the earth; to practicing and promoting the responsible use of the earth's ecosystems and resources; to educating and enlisting humanity to protect and restore the quality of the natural and human environment; and to using all lawful means to carry out these objectives. The Sierra Club's concerns encompass the Deschutes NF, including the Crescent Ranger District's Five Buttes project area and its immediate environs throughout the greater Cascade Lakes area forests. The Club's particular interest in this case and the issues which the case concerns stem from its Oregon Chapter's members' use and enjoyment of the greater Cascade Lakes forests, including the Five Buttes Project area and its immediate environs. The Oregon Chapter of the Sierra Club has approximately 23,000 plus members.

18. Plaintiffs' members intend to continue to use and enjoy the Deschutes National Forest, including the Crescent Ranger District and the Davis Late-Successional Reserve, frequently and on and ongoing basis in the future, including this fall and winter.

19. The aesthetic, recreational, scientific, educational, and religious interests of Plaintiffs' members have been and will be adversely affected and irreparably injured if Defendants continue to act and fail to act as alleged herein, and affirmatively implement the action that Plaintiffs challenge herein. These are actual, concrete, particularized injuries caused by Defendants' failure to comply with mandatory duties under NFMA, NEPA, and the APA. These injuries would be redressed by the relief sought.

20. The plaintiff organizations have an organizational interest in the proper and lawful management of the Crescent Ranger District of the Deschutes National Forest.

21. In addition to the activities described above, members of each plaintiff organization have participated extensively in administrative actions to protect the Crescent Ranger District on the Deschutes National Forest from potentially damaging timber sales. Plaintiffs' members have participated extensively in Forest Service decision-making processes regarding logging within the Five Buttes Project area of the Deschutes National Forest. Members have actively participated in the public process leading to the Five Buttes Project, and have exhausted any available administrative remedies.

22. Defendant LESLIE A.C. WELDON is the Forest Supervisor of the Crescent Ranger District of the Deschutes National Forest who signed the Record of Decision for the Five Buttes Project on June 8, 2007, and is sued in that capacity.

23. Defendant UNITED STATES FOREST SERVICE ("Forest Service") is an agency or instrumentality of the United States and is a division of the Department of Agriculture. The Forest Service is charged with managing the public lands and resources within the Crescent Ranger District on the Deschutes National Forest, in accordance and compliance with federal laws and regulations. The Forest Service is responsible for implementing the National Environmental Policy Act and National Forest Management Act procedures for projects on National Forests.

LEGAL BACKGROUND

National Forest Management Act

24. The National Forest Management Act (NFMA) requires the Forest Service to develop comprehensive land and resource management plans (LRMPs) for each unit of the National Forest System. 16 U.S.C. §1604(a).

25. The Deschutes LRMP is the adopted land use plan governing the management of public lands on the Deschutes National Forest.

26. In 1994, the Forest Service and Bureau of Land Management issue a Record of Decision for the Northwest Forest Plan ("NFP"). The NFP established management requirements for all Forest Service land within the range of the northern spotted owl, and amended all LRMPs within the range of the northern spotted owl. The Five Buttes Project is in the portion of the Deschutes National Forest that lies within the range of the northern spotted owl.

27. Pursuant to NFMA, the Forest Service must ensure and demonstrate that this site-specific project is consistent with the Deschutes Land Resource Management

Plan (DLRMP) and the Northwest Forest Plan (NFP). 16 U.S.C. § 1604(i); 36 C.F.R. § 219.10(e).

Northwest Forest Plan (NFP)

28. The NFP established a system of the Late-Successional Reserves ("LSR.") The objective of this system is to ensure that the LSRs are "managed to protect and enhance conditions of late-successional and old-growth forest ecosystems, which serve as habitat for late-successional and old-growth related species, including the northern spotted owl." NFP S&G, C-11.

29. No programmed timber harvest is allowed inside the LSRs. NFP 8. However, the NFP Standards and Guidelines provide specific guidelines for reducing the risk of large-scale disturbances in the LSRs. The guidelines provide that "[t]he objective will be to accelerate development of late-successional conditions while making the future stand less susceptible to natural disturbances." NFP S&G, C-13. "Silvicultural activities aimed at reducing risk shall focus on younger stands in Late-Successional Reserves." Id. Further, the guidelines state that "the scale of salvage and other treatments should not generally result in degeneration of current suitable owl habitat or other late-successional conditions." Id.

30. In addition to a system of Late-Successional Reserves, the Northwest Forest Plan established the Aquatic Conservation Strategy (ACS) "to restore and maintain the ecological health of watersheds and aquatic ecosystems contained within them on public lands." Id. at B-9. The ACS contains 9 objectives, the attainment of which may not be retarded or prevented by a site-specific project. Id. at B-11. Further, the ACS establishes "Key Watersheds" which are a "system of large refugia comprising

watersheds that are crucial to at-risk fish species and stocks and provide high quality water." Within Key Watersheds, the Forest Service is directed to "[r]educe existing system and nonsystem road mileage. If funding is insufficient to implement reductions, *there will be no net increase in the amount of roads in Key Watersheds*." Id. at C-7. *(emphasis added)*. NFP S&G, "Key Watersheds that currently contain poor quality habitat are believed to have the best opportunity for successful restoration and will receive priority in any watershed restoration program." Id. at B-19.

31. NFMA also requires the Forest Service to "provide for diversity of plant and animal communities" in managing national forests. 16 U.S.C. § 1604(g)(3)(b) (2004). To ensure this diversity, NFMA requires that fish and wildlife habitat be managed to maintain viable populations of existing native and desired non-native vertebrate species in the planning area. 36 C.F.R. § 219.19.

32. NFMA further requires that "to estimate the effects of each alternative on fish and wildlife populations, certain vertebrate and/or invertebrate species present in the area shall be identified and selected as management indicator species." 36 C.F.R. § 219.19(a)(1). These species ("MIS") shall be selected because their population changes are believed to indicate the effects of management activities. Id. § 219.19(a)(2). "[P]opulation trends of the management indicator species shall be monitored and relationships to habitat changes determined." 36 C.F.R. § 219.19(a)(6). NFMA requires that "habitat must be provided to support, at least, a minimum number of reproductive individuals and that habitat must be well distributed so that those individuals can interact with others in the planning area." Id. § 219.19.

33. NFMA regulations require inventory and monitoring on National Forests under 36 C.F.R. §219.12(d), (k); 36 C.F.R. §§219.19(a)(6), 219.26, and 219.19(a)(2). These regulations require that "each Forest Supervisor shall obtain and keep current inventory data appropriate for planning and managing the resources under his or her administrative jurisdiction." Id. §219.12(k). To ensure biological diversity, these regulations require that "[i]nventories shall include quantitative data making possible the evaluation of diversity in terms of its prior and present condition." Id. §219.26

National Environmental Policy Act

34. The National Environmental Policy Act ("NEPA") is "our basic national charter for protection of the environment." 40 CFR §1500.1(a). NEPA seeks to prevent or eliminate damage to the environment and biosphere by focusing government and public attention on the environmental effects of proposed agency action. 42 U.S.C. §4321.

35. NEPA's disclosure goals are two-fold: (1) to ensure that the agency has carefully and fully contemplated the environmental affects of its actions, and (2) to ensure that the public has sufficient information to challenge the agency.

36. A central purpose of NEPA is to ensure that an agency will not act on incomplete information, only to regret its decision after it is too late to correct. NEPA procedures must ensure that environmental information is available to public officials and citizens before decisions are made and before actions are taken.

37. An adequate EIS must consider the direct, indirect, and cumulative environmental impacts of the proposed action. 40 C.F.R. § 1508.8. Direct effects are caused by the action and occur at the same time and place as the proposed project. Id. at

§ 1508.8(a). Indirect effects are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable. Id. at § 1508.8(b). Both types of impacts include "effects on natural resources and on the components, structures, and functioning of affected ecosystems," as well as "aesthetic, historic, cultural, economic, social or health [effects]." Id. at § 1508. Cumulative impact results when the "incremental impact of the action [is] added to other past, present, and reasonably foreseeable future actions" undertaken by any person or agency. Id. at § 1508.7.

38. The NEPA regulations also require the Forest Service to "insure the professional integrity, including scientific integrity, of the discussions and analyses" in the EISs that it prepares. 40 C.F.R. § 1502.24. Furthermore, the BLM must disclose the extent to which the impact of the proposed action is scientifically controversial. See Id. at §§ 1502.16(a), 1502.16(b), 1508.27(b)(4), 1508.27(b)(5).

Administrative Procedure Act

39. The Administrative Procedure Act ("APA") confers a right of judicial review on any person that is adversely affected by agency action. 5 U.S.C. §702. Upon review, the court shall "hold unlawful and set aside agency actions…found to be arbitrary, capricious, an abuse of discretion or other not in accordance with the law." 5 U.S.C. §706(2).

FACTUAL BACKGROUND

Five Buttes Project

40. The Five Buttes Project area lies within the Odell Watershed on the Crescent Ranger District of the Deschutes National Forest. 141,772 acres of the project area belong to the Deschutes National Forest, while the remaining acres are privately

owned. The Five Buttes Project is entirely within a Tier 1 Key Watershed, which is a top priority under the Aquatic Conservation Strategy (ACS) of the NFP. The project area also includes the entire 48,900 acre Davis Late-Successional Reserve (LSR). The project area also includes the Critical Habitat Unit (CHU) OR-7, which contains virtually the same area as the Davis LSR. This CHU was designated to maintain essential northern spotted owl habitat. It is intended to provide a north-south and east-west link to other critical spotted owl habitat. [FEIS p. 105]

41. The 2003 Davis Fire burned 21,000 acres within the 160,000 acre Five Buttes project area. According to the Forest Service, the Davis Fire was the first documented "problem fire" event on the Crescent Ranger District. Problem fires are wildfires that exhibit extreme fire behavior due to certain weather and fuel conditions.

42. At the time of the Davis Fire, large amounts of fuels from previous commercial thinning projects remained on the ground, escalating the severity of the fire in those areas.

43. In addition to its use of computer fire models to measure fire risk, the Forest Service used the conditions on the ground in the Davis Fire area to model a "real world" fire scenario. ROD, p. 15. It is unclear whether the Forest Service included the increased amounts of fuels and slash present in the Davis Fire area from previous commercial thinning activities.

44. The Forest Service created the Five Buttes Project in response to the effects of the Davis Fire. The stated purpose of the project is two-fold: 1) reduce fuel loadings and forest vegetation density in order to lessen the risk that insect, disease, and wildfire will lead to large-scale loss of forest and 2) contribute to the local and regional

economies by providing timber and other wood fiber products. The project proposes to accomplish this two-fold purpose through commercial thinning and fuels treatments, including small tree thinning, limb pruning, and prescribed underburning.

45. One purpose of this project is to reduce the chance that a "problem fire" will destroy late-successional forest and wildlife habitat in the project area. However, the project will actually *remove* essential late-successional habitat for a period of 3-5 decades, in a paradoxical effort to protect the habitat.

46. The Five Buttes Project area is home to a diverse array of species, many of which depend upon complex, late-successional and old-growth forest containing "high fuel loads." Management for these late-successional and old-growth dependent species necessarily results in some wildfire risk remaining on the landscape. [FEIS p. 84] However, wildfire risk can be significantly reduced without commercial thinning, a practice which removes essential wildlife habitat. In fact, commercial thinning not only removes wildlife habitat, but it may actually *increase* the risk of wildfire, as later explained.

Spotted Owl Habitat

47. Northern spotted owls primarily inhabit old growth and mature forests with a dense canopy, including a medium to high canopy closure; multiple layers in the overstory; adequate quantities of dead and down woody material; and large, old trees. [FEIS p. 102] Suitable habitat for the northern spotted owl is also called Nesting, Roosting, and Foraging (NRF) habitat. As defined by the Deschutes National Forest, NRF habitat includes forested stands having a total canopy cover greater than or equal to

40%, with at least 5% of the canopy consisting of trees greater than or equal to 21 inches dbh. [FEIS p. 103]

48. The Five Buttes project area includes 19,038 acres of suitable spotted owl Nesting, Roosting, and Foraging Habitat (NRF) habitat. In fact, the majority of the suitable spotted owl habitat on the Crescent Ranger District is present in the Five Buttes planning area. 10 of the 13 remaining spotted owl territories on the Crescent Ranger District reside in the Five Buttes planning area. ROD, p. 12.

49. After the Davis Fire and other fires in the area, the Forest Service determined that the remaining late- and old-structured habitat in the Five Buttes Project area has become more important to dependent species, including the northern spotted owl. ROD, p. 7. And yet, the Five Buttes project would remove 2,023 acres of suitable spotted owl NRF habitat. ROD, p. 20 Therefore, every acre of NRF habitat that would be commercially thinned in the Five Buttes Project would no longer function as NRF habitat for as long as 3-5 decades. The Five Buttes Project would impact an additional 1,231 acres of NRF habitat through fuels treatment activities.

50. In 1995, the Davis LSR contained 15,451 acres of NRF habitat. [1995 Davis LSR Assessment]. Today, there are only 8,313 acres of NRF remaining in the Davis LSR. The Davis LSR Assessment (USDA 2006) calls for a minimum threshold of 25% NRF habitat throughout the LSR. [FEIS p. 119]. Currently, only 17% of the Davis LSR consists of NRF habitat. [FEIS p.113] The Five Buttes would impact 936 acres of NRF habitat in the Davis LSR. 618 acres of that forest would no longer function as NRF habitat.

51. Similarly, Five Buttes proposes activities on 522 acres of NRF in CHU-OR-7. 258 acres would no longer function as NRF habitat. Clearly, this project would have an enormous impact on available spotted owl NRF habitat.

52. According to the Forest Service, the activities of the Five Buttes Project "may reduce the quality, effectiveness, and the distribution of habitat available to the northern spotted owl in the planning area for the *short-and long-term* as well as directly, indirectly and/or cumulatively." *(emphasis added*). ROD, p. 12. Furthermore, "active management may have a negative impact on the northern spotted owl and its ability to establish and maintain breeding territories, find sufficient prey base habitat, and disperse across the landscape." ROD, p. 12

53. A recent Forest Service study on the populations and trends of the Spotted Owl shows that the decline of the spotted owl is largely due to the destruction of its habitat. Lint (2005). In light of this study, the Forest Service has an obligation to protect remaining habitat, especially within land allocations that are intended to provide such habitat.

Fire Ecology and Fire Science

54. The Five Buttes FEIS does not adequately reveal the scientific uncertainty and controversy surrounding the idea that commercial logging can reduce the risk of fire. It is uncertain and scientifically controversial that (1) reducing canopy bulk density reduces fire risk, (2) cutting trees with no upper diameter limit reduces the risk of fire, (3) the thinned area will actually prevent a stand-replacing fire, even with no plans to treat slash debris left by logging activities 4) the fire models used by the Forest Service accurately calculate fire risk and predict fire behavior, and (5) the project area's mixed-

conifer forest is currently at "uncharacteristically high" levels of fuels, and must be thinned in order to bring the mixed-conifer forest into its "historical range of variability."

Canopy Bulk Density Reduction

55. Spotted Owls require forests with late-successional characteristics, including large diameter trees. Lint (2005). These mature, late-successional and old-growth stands have dense, moist interiors and little wind, which inhibit the spread of wildfire. Fuels treatments that reduce stand density and open up the forest canopy actually enhance fire spread, as fire moves more readily through an open environment. An opened forest allows remaining fuels to dry out faster and winds to blow through the stand. Additionally, an open canopy encourages the growth of underbrush, further increasing the amount of forest fuels. *See generally* Odion et al. (2004); Morrison and Smith (2005); Raymond and Peterson (2005); Rhodes (2007).

56. The Forest Service insists that reducing a forest's canopy bulk density is necessary to reduce the risk of wildfire. Thus, the Five Buttes Project proposes to commercially thin at least 2,023 acres of mature forest, reducing the stands' density and opening the canopy.

57. The Forest Service never reveals how these actions may potentially *increase* fire risk, instead of helping to reduce it.

Lack of Upper Diameter Limit

58. The best available science indicates that large, old trees are the most fire resistant components of a forest. It is small trees, not large trees, which contribute to fire spread, intensity, and severity. Thus, large, old trees, with a minimum diameter of 20 dbh, should be protected when efforts are made to decrease wildland fire risk. *See*

generally, Agee (1993); Brown et al. (2003) and (2004); Baker et al. (2006); Carey and Schumann (2003); Countryman (1955); McIver and Starr (2001); Morrison and Smith (2005); Noss et al (2006); and Rhodes (2007).

59. About 5% of trees to be cut in the Five Buttes Project are over 21 inches dbh. An average of 12 large trees per acre will be left intact. [FEIS p. 110] However, this average is for an entire unit, because "12 large trees cannot be retained on every acre." [FEIS page 21]. The Forest Service never reveals how logging large trees over 21 inches dbh may potentially *increase* fire risk, instead of helping to reduce it.

Lack of Slash Treatment

60. Mechanical thinning, especially that focuses on reducing the canopy and stand density, generates large quantities of slash by relocating branches, twigs and needles from the canopy to the ground. *See generally* Brown et al. (2004), Stephens (1998), van Wagtendonk (1996), and Weatherspoon (1996). This science states that leaving small fuels untreated will increase, not decrease, the likelihood of future wild fires.

61. Additionally, heavy logging slash generates the highest fireline intensity of any wildland fuel type when it is dry. *See generally*, Graham et al. (2004). Indeed, logging without timely treatment of slash is the single most important factor contributing to an increase in the severity of subsequent wildfires. *See generally*, Stephens (1998); van Wagtendonk (1996); Weatherspoon (1996).

62. The slash from the most visible commercial logging units of the Five Buttes Project will be left sitting on the ground for 1 – 2 years after this project is implemented. [FEIS page 28.] The remaining units have no timeline for the clean-up of

slash created by logging. The Forest Service never reveals or analyzes how slash can increase the risk of fire.

Fire Models' Accuracy

63. The Forest Service uses fire models to calculate fire risk and predict potential fire behavior. However, these fire models do not utilize site-specific data collected from on-the-ground field sampling. Instead, the models use remote sensing (satellite and aerial photo interpretation) of canopy closure as a proxy.

64. Remote sensing of canopy closure to determine fire risk may create a bias against late-successional forests. Azuma et al. (2004); Odion et al. (2004); Raymond and Peterson (2005). Specifically, satellite and aerial photography may identify the dense canopy associated with late-successional forests as particularly fire-prone, when the opposite may be true. The Forest Service never discloses the short-comings of its fire models.

Fire Regime Uncertainties

65. The Forest Service relies on Fire Regime Condition Class (FRCC) to determine whether the forest is within its "historic range of variability." FRCC is a controversial method of determining the ecological status of a forest, because it is seen as overly simplistic and based on subjective estimates and guesses about the general fire regime over a large landscape. Morrison and Smith (2005). The Forest Service does not disclose the scientific controversy surrounding the use of FRCC.

66. The Forest Service claims that fuels within the project area are outside the "desired condition," so a large fire is expected. [FEIS page 84, 119-20] The "desired condition" means as close to a "characteristic level of disturbance" as possible.

However, wet, mixed-conifer forests have a mixed-severity fire regime. This means that the forests have developed with both low-severity and high-severity fire events. It is possible that within this forest type, a high-severity fire would constitute a characteristic level of disturbance. Thus, there is no support to show that the stands' fire regimes have been altered. Furthermore, mixed-conifer forests are questionable candidates for fire restoration through thinning, as attempts to restore the fire regime in these types of forests will often negatively affect habitat that these forests provide. See generally Brown, et al. (2004).

67. If the fire regime is not altered, then fuel "treatments" do not help to reduce the risk of severe fire or restore the stand to its natural fire behavior. Rhodes (2007). The mixed-conifer stands and some of the low-elevation ponderosa pine stands in the Five Buttes Project area do not have altered fire regimes. Thus, any fire restoration thinning that is intended to return the forest back to its historic range of variability does not work in these areas. The Forest Service does reveal this contradiction.

68. All of the above studies were either before the agency in designing the Five Buttes Project and issuing the Five Buttes FEIS and ROD, or were provided to the agency by Plaintiffs and others during the public comment process.

Cumulative Impacts in the Five Buttes Project Area

69. The Five Buttes Project is the third project of its kind in the Crescent Ranger District. Specifically, Seven Buttes and Seven Buttes Return projects each directly overlap the Five Buttes Project area. The first project, Seven Buttes, impacted 7,000 acres with both commercial thinning and fuels treatment activities.

70. The second project, Seven Buttes Return, planned management activities on 16,000 acres. Seven Buttes was partially completed, but had to be reevaluated after the Davis Fire burned much of the project area. At least two timber sales, which were part of Seven Buttes Return, had recently been harvested when the fire went through the area. The trees had not yet been yarded and were still on the ground, which caused devastating conditions and fueled the fire.

71. The stated purpose of Five Buttes is to reduce fuels to protect habitat. Seven Buttes and Seven Buttes Returns projects had the same stated purpose. The EIS does not explain how each of these predecessor projects has affected the risk of fire on the landscape. And yet, the FS plans to implement another such project, without analysis of the effectiveness of this type of thinning on the landscape.

72. It is important for the public to know whether the thinning intended to prevent fire actually did prevent fire. From the outcome of the Davis Fire, where over 80% of the fire area had complete mortality, it is safe to assume that thinning within the fire perimeter was most likely unsuccessful. [FEIS at 80] However, there is no indication of whether the thinning actually was successful, or how the variously "treated" forests in these project areas fared during the Davis Fire.

73. Finally, the Davis Fire Recovery Project salvaged 3,785 acres of forest in the Davis Fire area, which is entirely within the Five Buttes Project area. Davis Fire Recovery. ROD, p. 10 There is virtually no discussion of the cumulative impacts of the fire and the subsequent salvage operations.

Bass Timber Sale

74. The Forest Service has already auctioned the first timber sale from the Five Buttes Project area. This sale is called the Bass Timber Sale. This sale comprises roughly 1/6 of the entire sale and would log about 1,079 acres of low-elevation ponderosa pine, including mature and old-growth overstory trees and mature understory trees.

75. The sale units of the Bass Timber Sale do not exhibit signs of long-term fire suppression. It is clear that these forests have survived a century or more of recurrent fire. Large diameter ponderosa pines above 20" dbh in these forests have no ladder fuels and most trees have straight boles branching into canopy about 40-50 feet above the forest floor. In some instances the trees' canopy height is greater. Older area trees, snags, and large downed logs bear approximately 15 to- 25 year old fire scars that show relatively recent fire has been through the area. The analysis within the FEIS failed to disclose actual fire history within the unit areas, and assess whether these mid and high elevation forests are within their historic fire intervals, or accurately address how many – if any – fire cycles may have been missed. It is true that young trees crowd areas within the forest, which have grown in since the last recent fire. However, the agency failed to assess if these young trees are simply a natural part of the area's mixed severity fire forest ecosystem, that would normally grow between fire cycles, or to develop an action alternative that would "mimic" fire patterns, removing young tree thickets while retaining the large fire resistant trees that already have survived between two to three or more centuries of fires. Logging removal of large old fire resistant trees in the units of the Bass Timber Sale would not be "restoration" or "fuels reduction," as these trees cannot be considered fuels. The failure of the agency to responsibly focus on legitimate thinning

of the small diameter young crowded trees and "overstocked" conditions, while protecting large fire resistant trees does not comport with scientific research on fire risk and fuels reduction. As such, Forest Service claims the Five Buttes Project is aimed at restoring the areas forests are baseless.

76. Field surveys conducted by plaintiffs have revealed that a number of old growth ponderosa pine trees are marked to be cut. The size of these trees range from 23.5" to 37.5" dbh (that is 37.5 dbh – the largest diameter discovered thus far, with four more Bass units to re-survey now that they are marked for cutting). Many mid sized trees would also be cut. While some areas of the sale do leave a majority of large trees, in many areas the proposed thinning would leave very little habitat for wildlife. Cutting large, old-growth and mature ponderosa pine trees will not make this area more "fire-safe" – in fact, cutting large trees will *increase* fire risk in this area, as the large, old trees are the most fire-resistant component of the forest. Not only will the forest be less habitable for wildlife in the present, but it will also be *more* fire-prone as the large trees are replaced by smaller, more combustible trees. The evidence of relatively recent fire scars, some selective logging of old growth trees, and the abundance of young small diameter trees and brush that have grown in since the last fire and previous logging, indicate that thinning in this area would repeat this pattern. Openings resulting from commercial logging would grow in with dense fire prone brush and young trees within a relatively short period of time. Each time old fire resistant trees are removed, the additional openings fill in with more fire prone small trees, increasing fire risk throughout the areas forests. Watershed Impacts of Forest Treatments to Reduce Fuels and Modify Fire Behaviour by Jon Rhodes, the Sierra Nevada study by C. Hanson et al, and other

scientific research have noted these same patterns. The agency failed to base their fire risk reduction plans upon scientific research, and as a result these plans would have harmful consequences across the project area, resulting in increasing fire severity risk while degrading irreplaceable LSR habitat, in contravention to permissible actions within NFP LSR habitat, and within old and mature forests across the area.

FIRST CLAIM FOR RELIEF

The Forest Service's Authorization of Commercial Thinning in the Late-Successional Reserves Violates the National Forest Management Act

77. Plaintiffs incorporate by reference all preceding paragraphs.

78. The Forest Service must ensure that activities on public lands comply with the Deschutes LRMP and the NFP. 16 U.S.C. §1604(i).

79. The primary objective of the NFP is to provide for the management of late-successional and old-growth forest. Within the NFP, guidelines apply specifically to Late-Successional Reserves (LSRs) "to protect and enhance conditions of late-successional and old-growth forest ecosystems, which serve as habitat for late-successional and old-growth related species including the northern spotted owl." NFP ROD at C-11. Within the LSR guidelines, there are further protocols for reserves east of the Cascades (the so-called "East-side late-successional reserves") that are applicable to areas within the Deschutes National Forest, and the Five Buttes Project. NFP,C-12 – 13.

80. In recognition of these guiding principles, "the Forest Service determined that the remaining late- and old-structured habitat in the Five Buttes Project area is elevated in its importance to dependent species." ROD, p.7.

81. However, the Forest Service itself has stated that "the intensity of the treatments, their timing, and placement on the landscape may have a negative effect on

the northern spotted owl, a federally listed species. Silvicultural activities aimed at making forested stands more resistant to insects, disease, and fire may also cause a short- or long-term modification or degradation of suitable habitat." ROD, p.12.

82. While the NFP recognizes the need for forest management activities to reduce the risk of fire, it instructs that, in East-side late-successional reserves, "silvicultural activities aimed at reducing risk shall focus on younger stands in Late-Successional Reserves. The objective will be to accelerate development of late-successional conditions while making the future stand less susceptible to natural disturbances." NFP S&G, C-13.

83. Yet, the Forest Service states "[t]majority of trees to be removed will be less than 21 inches dbh but occasionally trees over 21 inches will be cut to meet basal area objectives, spacing needs, or diseased tree removal.

84. First, the proposed action fails to focus on younger stands, which are typically under 100 years old, dominated by trees less than 20" dbh, and absent large old growth trees greater than 20" dbh Second, the stated reasons for cutting large trees is not consistent with the NFP goal to reduce fire susceptibility by eliminating smaller trees, and to promote late-successional stands by allowing larger trees to enhance the forest's natural resistance to fire.

85. Furthermore, when management activities are conducted in older forests in LSRs, they must follow these guidelines: "(1) the proposed management activities will clearly result in greater assurance of long-term maintenance of habitat, (2) the activities are clearly needed to reduce risks, and (3) the activities will not prevent the Late-

Successional Reserves from playing an effective role in the objectives for which they are established." NFP S&G, C-13.

86. Concerning the first requirement, commercial thinning in the Five Buttes Project area does not clearly result in greater assurances of long-term maintenance of habitat. The Forest Service admits that the chosen alternative "is likely to adversely affect Primary Constituent Elements of spotted owl critical habitat at the forest stand level." ROD, p. 21. The Five Buttes Project "may reduce the quality, effectiveness, and the distribution of habitat available to the northern spotted owl in the planning area for the *short-and long-term* as well as directly, indirectly and/or cumulatively." ROD, p. 12 *(emphasis added)*. Furthermore, the agency states that "the Five Buttes project likely will have a beneficial effect *on the forested areas* within the CHU [Critical Habitat Unit] *over time*." ROD, p. 21 *(emphasis added)*. First, the agency admits that the project will adversely affect the habitat of the spotted owl. Second, the hope of a "beneficial effect" in on the "forested area," which is not clear is the same thing as spotted owl habitat. Third, this positive effect to the forest will happen "over time," which the Forest Service has admitted could be 20-50 years. FEIS, p.109-110. The Forest Service fails to ensure that the project clearly results in greater assurances of long-term maintenance habitat.

87. Concerning the second requirement, the Forest Services fails to demonstrate the project is needed to reduce fire risk. The Forest Service cannot make this showing because the project runs counter to the requirement to reduce fire because it logs fire-resistant trees, and opens up the canopy which causes more underbrush, drier fuels, and more wind. Heavy thinning projects, like this one, actually increase underbrush, which exacerbate the risk of fire. Opening canopy makes forests drier,

windier, and generally more prone to large stand fire. Logging large fire-resistant trees is not needed to reduce fire risk, and is contrary to the Standards and Guidelines of the NFP to promote fire-resistant, late-successional conditions. NFP, S&G, C-13.

88. Concerning the third requirement, the Forest Service fails to show that the project's management activities do not prevent the LSRs from playing an effective role in the objectives for which they are established. Characteristics of late-successional and old-growth forest ecosystems include "multiple canopy layers, smaller understory trees, canopy gaps, and patchy understory." NWFP ROD at B-2. The proposed logging in fact degrades the habitat by decreasing the diversity of the LSR stands. The LSR stands that are commercially thinned may never return to late-successional forests. The Forest Service admits that, in the area of heavier thins, the recovery period could stretch to 50 years. FEIS, p.109. At the same time, the re-accumulation of fuels to pre-thinning levels would likely take a maximum of 20 years. If, as a result, the Forest Service needs to conduct thinning operations at least once every 20 years, while the habitat may take up to 50 years to recover, the late-successional reserves will never have a chance to "play an effective role in the objectives for which they were established."

89. Finally, management activities within LSRs must be designed to enhance late-successional forest characteristics. When conducting these activities under the NFP, an agency, here the Forest Service, cannot prioritize economic gain over ecosystem preservation. The Forest Service's decision to commercially log trees with greater than 21 inches dbh in direct contradiction to the NFP Standard and Guidelines to reduce fire risk by promoting the development of late-successional conditions, as previously discussed, is clearly for economic purpose.

90. The logging activities associated with the Five Buttes Project are inconsistent with LSR objectives and the Standards and Guidelines of the NFP, and are arbitrary, capricious and not in accordance with NFMA. 5 U.S.C. §706(2)(A).

SECOND CLAIM FOR RELIEF

Defendants violate NFMA by violating the Aquatic Conservation Strategy of the NFP by increasing overall road densities in the watershed and by preventing attainment of the nine ACS objectives.

91. Plaintiffs incorporate by reference all preceding paragraphs.

92. The purpose of the ACS is "to restore and maintain the ecological health of watersheds and aquatic ecosystems contained within them on public lands." NFP S&G, B-9. The ACS contains 9 objectives, the attainment of which may not be retarded or prevented by a site-specific project. Id. at B-11. Further, the ACS establishes "Key Watersheds" which are a "system of large refugia comprising watersheds that are crucial to at-risk fish species and stocks and provide high quality water."

93. The entire Five Buttes Project is within a Key 1 Watershed. Current road densities in the project area vary, and some areas have more than 6 miles of road per square mile of land (mile/mile^2.) EIS, p. 288-289. At least eight of the twelve subwatersheds in the project area have road densities of more than 4 mile/mile^2. Id. In Key Watersheds, the Forest Service is directed to "[r]educe existing system and nonsystem road mileage. If funding is insufficient to implement reductions, there will be no net increase in the amount of roads in Key Watersheds." NFP S&G, C-7.

94. The Five Buttes Project authorizes construction of an additional 5.9 miles of roads in the project area. The Five Buttes Project will not reduce the existing road

system, it will inflate the existing road system in violation of the ACS guidelines for Key Watersheds.

95. The NFP states that "Key Watersheds that currently contain poor quality habitat are believed to have the best opportunity for successful restoration and will receive priority in any watershed restoration program." Id. at B-19 The Watershed Analysis identifies floodplain function and riparian health as in "excellent" condition over 99 percent of the watershed at issue. EIS, p. 251.

96. The Five Buttes Project will degrade water quality and aquatic habitat and prevent attainment of the nine ACS objectives.

97. The failure of the Five Buttes Project to follow the objectives and Standards and Guidelines of the ACS is a violation of NFMA. 5 U.S.C. §706(2)(A).

THIRD CLAIM FOR RELIEF

The Forest Service's Failure to Disclose and Analyze Opposing Scientific Opinion Regarding the Impacts of the Project on Spotted Owl Habitat, the Purported Need to Reduce Canopy Density and the Effect of Limited Slash Removal Violates the National Environmental Protection Act

98. The Plaintiffs incorporate by reference all preceding paragraphs.

99. The Forest Service has an affirmative duty to disclose and analyze scientific information counseling against the activities proposed by the agency, or that call into question the expected environmental effects of the proposed action. 40 C.F.R. §§ 1402.9(b), 1502.24. *See also*, 40 C.F.R. § 1508.27(b)(4). This information must be discussed in the body of the EIS.

Impacts on Spotted Owl Habitat

100. First, the FEIS states that the Nesting, Roosting and Foraging (NRF) areas will no longer be suitable habitat for Spotted Owl in the short-term, but that in the long-

term, 30-50 years, the habitat will be more protected. This claim is unsubstantiated and controversial.

101. The Forest Service never analyzed the uncertainty about whether habitat degraded in the short-term will persist in the long-term or return to suitable habitat conditions. The Forest Service states "commercially thinned stands *could* be allowed to develop into NRF habitat conditions again, although it *may* require 2-5 decades to achieve this condition." FEIS, p. 117 *(emphasis added)*.

102. Second, the re-accumulation of fuels in the affected area to pre-thinning levels would likely take a maximum of 20 years. If, as a result, the Forest Service conducts thinning operations at least once every 20 years, while the habitat may take up to 50 years to recover, the late-successional reserves may never recover. The Forest Service fails to address adequately how the maintenance of the re-growth of underbrush will not undermined the return of the area of spotted owl habitat.

103. Third, the life span of the northern spotted owl is typically no longer than 10 years. Given that the owls' lifespan is significantly shorter than the time allowed for the forest to recover to NRF habitat, it is highly suspect that any owls would remain in the vicinity to return.

104. Finally, barred owls have been documented moving into the region's forests as Canadian forests are being felled. Barred owls are known to displace, kill, and potentially interbreed with spotted owls. Barred owls prefer the type of more open forest habitat that would result from the Five Buttes logging. It is highly possible that over the next 30 to 50 years it is hypothesized it would take for logged LSR NRF habitat to become suitable spotted owl habitat, that barred owls would have moved into the

territory, become established, and prevent spotted owl return even if any spotted owls remained in the vicinity. As barred owls have been reported in the Bend Ranger District just north of the project area, the agency's dismissal of this issue, and failure to assess likely repercussions to spotted owls over the ensuing 30 to 50 years post project, jeopardizes spotted owl recovery goals.

Purported Need to Reduce Canopy Density

105. There is also significant scientific controversy undermining the hypothesis that commercial thinning can actually reduce the risk of fire, and in particular, the Forest Service's stated need to reduce canopy density.

106. Mechanical fuels treatments, which open up the canopy, actually increase the growth of underbrush, reduce moisture under the canopy, and increase winds. This project plans to reduce significantly the canopy bulk density.

107. Furthermore, it is uncertain and scientifically controversial that (1) cutting trees with no upper diameter limit will reduce the risk of fire, (2) reducing canopy bulk density reduces fire risk, (3) the thinned area will actually prevent a stand-replacing fire, (4) late-successional characteristics will actually redevelop in the future, (5) a fire will start in the Project area before the fuels re-accumulate to create a "fire hazard" again, and (6) mixed-conifer forest is currently at "uncharacteristically high" levels of fuel and must be thinned to bring the mixed-conifer forest into its "historical range of variability."

108. The Forest Service never reveals how these actions may potentially *increase* fire risk, instead of helping to reduce it.

109. In addition, the Forest Service never discloses the short-comings of these models, even though there are clear reasons to be skeptical of using them to predict fire in late-successional forests. Short-comings of models must be disclosed.

Effect of Limited Slash Removal

110. The Forest Service fails to disclose how slash from the project will be treated. Furthermore, it fails to reveal science that shows how slash piles from logging create a greater risk of fire.

111. The slash from the most visible commercial logging units of the project will be left sitting on the ground for one or two years after this project is implemented. FEIS, p. 28. The remaining units have no timeline for clean-up of slash.

112. The EIS never analyzes how slash can increase the risk of fire. Mechanical fuels treatments generate slash, which are highly flammable and increase the risk of fire. (Rhodes, 2007). Post-wildfire studies have shown that there are severe effects to the landscape if a project's slash is not cleaned up before the next fire occurs. (Carey and Schumann, 2003).

113. The Forest Service must disclose how it will deal with the slash generated by this project, and reveal the scientific evidence stating the increase in fire risk due to slash left behind after fuels treatments.

114. Regarding the duration of the impacts of the project on spotted owl habitat, the merit of the plan to reduce canopy density to reduce fire risks, and the effects of limited slash removal, the Forest Service fails to analyze its reasons as an untested and undebated hypothesis, rather than as facts in violation of NEPA.

115. Therefore, the Forest Service's failure to disclose and analyze scientific information counseling against the activities proposed by the agency, or that call into question the expected environmental effects of the proposed action, and to ensure that the proposed alternative supports the purpose and need, is arbitrary, capricious, and not in accordance with NEPA. 5 U.S.C. § 706(2)(A).

FOURTH CLAIM FOR RELIEF

The Forest Service's Failure to Ensure Scientific Integrity of Its Conclusions Violates NEPA and is Arbitrary and Capricious

116. Plaintiffs incorporate by reference all preceding paragraphs.

117. The Forest Service is required to ensure the scientific integrity of the planning documents, including the Final Decision Memo, for the Five Buttes Project. The information presented by the Forest Service must be of high quality. "Accurate scientific analysis, expert agency comments, and public scrutiny are essential to implementing NEPA." 40 C.F.R. § 1500(1)(b). In addition, under NEPA, "[a]gencies shall ensure the professional integrity, including scientific integrity, of the discussions and analyses in environmental impact statements. They shall identify any methodologies used and shall make explicit reference by footnote to the scientific and other sources relied upon for conclusions in the statement." 40 C.F.R. § 1502.24. This direction includes a requirement that methodologies and scientific sources be disclosed. Id.

Inadequacy of Fire Models

118. The fire models used by the Forest Service to determine that there is an urgent need to thin the old-growth forests to make them more fire resistant are skewed and unreliable. The Forest Service's use of questionable fire models fails to provide adequate support for either their conclusion that tree canopy density must be reduced in

order to reduce fire risk or their conclusion that there is a high risk of fire in the Five Buttes Project area. Furthermore, the fire models that are relied on by the Forest Service in the FEIS do not adequately represent the situation on the ground in the forest. In the EIS, the Forest Service itself states that "[d]ue to the multiple parameters and stochastic nature of lightning and human-caused ignitions, fire risk can never be recorded with any degree of certainty."

NRF Methodology

119. The Five Buttes EIS fails to disclose the methodology used to determine which forest stands in the project area or logging units function as current nesting, roosting, and foraging (NRF) habitat. The EIS further fails to disclose the acreage of Late-Successional Reserves that will be affected by the project's implementation.

120. Therefore, the Forest Service's conclusions based inadequate analysis, models and surveys are arbitrary, capricious, and not in accordance with NEPA. 5 U.S.C. § 706(2)(A).]

FIFTH CLAIM FOR RELIEF

The Forest Service's Failure to Consider the Cumulative Impacts of Past, Present, and Reasonably Foreseeable Future Federal and Nonfederal Actions Violates NEPA and is Arbitrary and Capricious

121. Plaintiffs incorporate by reference all preceding paragraphs.

122. The Five Buttes Project fails to identify and evaluate the cumulative impacts of the project as required by NEPA. 40 C.F.R. § 1508.25(a)(2). Cumulative effects are defined as "the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency or person undertakes such other actions. Cumulative

impacts can result from individually minor but collectively significant actions taking place over a period of time." 40 C.F.R. § 1508.7.

123. To meet this requirement, past timber sales must be adequately catalogued and the effects addressed by the EIS.

124. For the Five Buttes Project, the Forest Service failed to consider adequately previous timber sales in its cumulative impacts analysis. The Forest Service did not provide adequate data of the time, type, place, and scale of past timber harvests and did not explain in sufficient detail how different plans and harvest methods affected the environment. The Forest Service simply begins with a table that discusses the various projects planned, in progress, or completed within or near the project area. Throughout the EIS, there is discussion of other cumulative effects of these projects. However, the discussion is brief and often conclusory. In many cases, there is no discussion of the time, place, or scale of these projects, or how they specifically affected the environment. Most notably, the cumulative impacts analysis on soils, forested vegetation, fire and fuels, and spotted owl habitat destruction are obviously lacking.

125. Furthermore, the Forest Services must consider the interaction of multiple activities and cannot focus exclusively on the environmental impacts of an individual project.

126. The Forest Service's discussion is inadequate because it simply stated that the project occurred and that they had effects. Three recent projects in the project area merited special attention in the cumulative impacts discussion. Specifically, the Davis Fire Recovery Project, the Seven Buttes Project, and the Seven Buttes Return Project each directly overlap the Five Buttes Project area.. The Davis Fire Recovery Project

salvaged 3,785 acres on the area of the Davis burn, which is entirely within the Five Buttes Project area. Davis Fire Recovery. ROD, p. 10. The Seven Buttes Project and the Seven Buttes Return Project were large commercial thinning projects, totaling 23,000 acres, on the same forestland as the Five Buttes Project.

127. The purpose of the Five Buttes Project is to reduce fuels to protect habitat. This was the exact same purpose of the Seven Buttes and Seven Buttes Returns projects. However, the Forest Service does not mention whether thinning these areas actually served its purpose when the Davis Fire moved through the area. There is no analysis of whether the projects were successful, or how the various "treated" forests in these project areas fared during the fire. Rather, the cumulative impacts analysis for the fire and fuels section of the EIS relies solely on hypothetical modeling situations, instead of actual on-the-ground observation of how the Davis fire acted in the thinned areas.

128. Finally, an agency must look at all actions that impact the environment "regardless of what agency or person undertakes such other actions." 40 C.F.R. §1508.7. This means that all actions, public and private, inside *and outside* of the project area must be considered in a cumulative impacts analysis.

129. To meet these requirements, the Forest Service needed to look inside and outside the project area to ensure that it is maintaining adequate habitat over the large-scale landscape. The large-scale manipulation of spotted owl habitat in this area is certain to have enormous effect on the species. However, in the EIS, there is no indication that the Forest Service looked outside of the project area at nearby Spotted Owl habitat.

130. The Forest Service's failure to analyze the cumulative impacts on soils, forested vegetation, fire and fuels, and spotted owl, and to consider the interaction of multiple activities is arbitrary, capricious, and not in accordance with NEPA. 5 U.S.C. § 706(2)(A).

PLAINTIFFS' PRAYER FOR RELIEF

Plaintiffs respectfully request that this Court:

1. Declare that Defendants violated the National Environmental Policy Act, the National Forest Management Act, the Administrative Procedures Act, and their implementing regulations in preparing and approving the Five Buttes Project Environmental Impact Statement and Record of Decision;

2. Declare that the Defendants' actions as set forth in this complaint are arbitrary, capricious, an abuse of discretion, are not in accordance with law and are without observance of procedures required by law and therefore must be set aside;

3. Enjoin the Forest Service and its agents from proceeding with the Five Buttes Project, or any portion thereof, unless and until the violations of federal law set forth herein have been corrected to the satisfaction of this court;

4. Award Plaintiffs their reasonable fees, costs and expenses associated with this litigation pursuant to the Equal Access to Justice Act, 28 U.S.C. §2412 or other authority; and

5. Grant Plaintiffs such other and further relief as the Court deems just and equitable.

Respectfully submitted and dated this 2nd day of October, 2007.

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